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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 71 of 1989
and
INCOME TAX REFERENCE No 73 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

MATURDAS GOVINDDAS (HUF)

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following two questions under Section 256(2) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the opinion of this Court:-

INCOME-TAX REFERENCE No. 71 of 1989

"(1) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has not erred in law in deleting the addition on account of interest payments to M/s Laxmi Vijay Mills and Harivallabhdas Mulchand ?

(2) Whether the finding of the Appellate Tribunal that the assessee is entitled to the allowance of interest payments to M/s Laxmi Vijay Mills and Harivallabhdas Mulchand as claimed, is correct in law and sustainable from the material on record ?"

INCOME-TAX REFERENCE No. 73 of 1989

"(1) Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has not erred in law in deleting the addition on account of interest payments to M/s Laxmi Vijay Mills and Harivallabhdas Mulchand ?"

(2) Whether, the finding of the appellate Tribunal that the assessee is entitled to the allowance of interest payment to M/s Laxmi Vijay Mills and Harivallabhdas Mulchand as claimed is correct in law and sustainable from the material on record?"

2. Income-tax Reference No. 71 of 1989 relates to assessment year 1970-71, while Income-tax Reference No. 73 of 1989 is in relation to assessment years 1966-67, 1967-68, 1968-69, 1969-70 and 1971-72.

3. The assessee HUF paid interest to M/s Laxmi Vijay Mills Ltd. and Harivallabhdas Mulchand and claimed deduction thereof as business expenditure. The Income-tax Officer disallowed the claim of the said deduction, but the Appellate Assistant Commissioner

followed the decision in case of Krishnadas Govinddas, HUF of the assessee's brother and upheld the claim of the assessee directing that interest payment should be allowed as a deductible item of expenditure. The Tribunal declined to interfere with the decision of the Appellate Assistant Commissioner and hence these references at the instance of the revenue.

4. We have heard Mr BB Naik for the revenue. Though served, none appears for the assessee.

5. Our attention is invited to the decision of this Court in CIT vs. Krishnadas Govinddas, Income-tax Reference No. 133 of 1984 dated 5.2.1999 wherein similar controversy was brought before this Court. In the aforesaid decision in case of Krishnadas, it has been held that the interest paid to the two firms cannot be treated as business expenditure. Following the said decision, we hold that the Tribunal was not right in deleting the addition made by disallowing the interest payment to the two firms in question. Both the questions referred to us in both the references are answered in the affirmative i.e. in favour of the revenue and against the assessee. Both the references are disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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